

Even though sales may be at retail, the Illinois Retailers' Occupation Tax does not apply to farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily in production agriculture or State or federal agricultural programs. See 86 Ill. Adm. Code 130.305. (This is a GIL).

August 16, 2000

Dear Xxxxx:

This letter is in response to your letter dated May 22, 2000 that was received in our office on June 29, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Web site at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing this letter to request information from your office as to what qualifies as agricultural machinery and equipment as it relates to sales tax exemptions for these items in your state.

I have a client located in STATE who sells a variety of agriculture related merchandise. The main product they market, however, is a pressure cure drying system for grain commodities. The pressure cure drying system allows grain crops to be harvested at 18% - 25% moisture and dried down to storable moisture percentages using only natural air. The pressure cure drying system consists of circular steel bins ranging from 18' to 40' in diameter that are approximately 20' tall. The storage capacity of these bins ranges from 4,000 to 30,000 bushels. These bins are built on concrete pads, and perforated steel floors are put inside the bins above the concrete. Multiple high pressure air pumps are set up around the outside of the bins that force air at high pressure below the perforated floor platform inside the bin and force it up through the floor to dry the grain commodities. Multiple roof vents are installed in the roof to allow the moisture laden pressurized air to escape the structure. Unloading equipment is installed inside and outside the bin to facilitate rapid unloading after the grain inside has been dried so that it can be refilled with the next batch for drying. Other items in the system include temperature monitors, grain spreaders and grain level indicators.

In addition to the pressure cure drying system, my client also sells various other agricultural equipment items, including bins sweeps, bin sealants, aeration fans, power heads, electric motors, portable aeration tubes, seed/fertilizer tenders, drill fills and grain cleaners.

My client would like a definitive answer in writing as to whether all or any of the items they sell qualify for any sales tax exemptions, and whether it makes a difference if the components of the system are sold separately as opposed to a complete new set up.

My client has been steadily increasing their sales territory into several different states, and are now considering efforts to sell their products in Illinois. This issue of what qualifies for agricultural sales tax exemptions seems to keep coming up in different variations in the states they do sell in. For example, STATE, their state of domicile, has indicated that some of their products qualify for a reduced agricultural rate and that others do not. Other states they have expanded into have different items designated for reduced rates, and one imposes another tax called a contractors tax.

It needs to be noted that any construction work needed to assemble and erect the pressure cure drying systems are done by a network of construction companies not related to my client located in different states who are independent contractors. My client supplies material only and all shipments of these are made by common carrier to destination sites.

Before my client begins selling their products in Illinois, they will want to receive a succinct, personalized letter from your office as to what sales tax amounts they need to collect on items they sell. Will you be able to provide it? The reason for this request is that their past experience with STATE and other states has been that they have been told one thing in this regard, and then in the event of sales tax audits they are told they are not collecting the correct amount on some of the items. It is very difficult to collect additional sales taxes from customers after the invoice has been paid, and any tax differentials come out of my client's pocket. They want to do it correctly from the start and have written evidence that they are doing it correctly.

I look forward to your response. Thank you for your assistance.

Even though sales may be at retail, the Illinois Retailers' Occupation Tax (i.e. sales tax) does not apply to farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily in production agriculture or State or federal agricultural programs. Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. New or used repair or replacement parts, necessary for the operation of the machine used in production agriculture or in State or Federal agricultural programs, qualify for the exemption. Please refer to 86 Ill. Adm. Code 130.305, enclosed.

Your letter inquires about grain bins and several bin accessories and related items. Please note that Subsection 130.305(i) states that "[f]arm machinery would include tractors, combines, balers, irrigation equipment, cattle, and poultry feeders, but not improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings . . . . Certain machines qualify for the

exemption if purchased by farmers directly from retailers, even though they are installed as realty improvements. Such machines include but are not limited to augers, grain dryers (heaters and fans), . . .”

Therefore, building materials such as concrete and steel panels that are converted into real estate such as grain bins do not qualify for the exemption. However, certain equipment used in conjunction with grain bins such as dryers, blowers, and augers can qualify for the exemption if used primarily in production agriculture. Components of a grain drying system attached to the grain bin such as temperature monitors, grain spreaders and grain level indicators would be exempt if sold for use in production agriculture. The roof vents would be taxable as a common building material. Supplies are not exempt, 86 Ill. Adm. Code 130.305(k). An invoice that contains items that are exempt and also items that are not exempt should break out the selling prices for purposes of documenting the exemption.

Please remember the definition of production agriculture as set out in 86 Ill. Adm. Code 130.305(b) and (f) with respect to crops covers production activities that end with the harvesting and drying of crops on the producer's farm. Therefore sales of grain bin drying system components to private or cooperative grain elevators or other businesses such as food processors would not be eligible for the farm machinery and equipment exemption. Similarly, grain cleaners would be exempt if used by a producer on his farm in production agriculture, but if used by an off-farm business after the production of the crop, the exemption would not apply.

The exemption also includes implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code (625 ILCS 5/1-130), farm machinery and agricultural chemical and fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code (625 ILCS 5/3-809). Other motor vehicles required to be registered under the Illinois Vehicle Code (625 ILCS 5/1-100 et seq.) are subject to tax. Agricultural chemical tender tanks and dry boxes include units sold separately from a motor vehicle required to be licensed and units sold mounted on a motor vehicle required to be registered, if the selling price of the tender is separately stated.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. This would include the construction of grain bins. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See the enclosed copy of 86 Ill. Adm. Code 130.1940.

When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. Construction contractors should pay tax to their Illinois registered suppliers on building materials they will incorporate into real estate. If such materials are purchased without paying tax, such as from unregistered out-of-State suppliers, the purchasing contractors must self-assess and pay the Use Tax directly to this Department. Persons who buy or manufacture building materials to be incorporated into real estate owe the tax on their cost price when they hire a separate business to construct the building.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk

Enc.